

In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

9

MARGARET D. KLEINSCHMIDT, as Administratrix  
of the Estate of Walter Granger Kleinschmidt,  
Deceased,

*Appellant,*

vs.

ERNEST U. SCHROETER, as Trustee in Bankruptcy  
of the Estate of B. F. Baum, a Bankrupt,

*Appellee.*

---

BRIEF FOR APPELLEE.

---

RUPERT B. TURNBULL,  
Title Ins. Bldg., 433 S. Spring St., Los Angeles,  
*Solicitor for Appellee.*

FILED

NOV - 2 1937

---

Parker & Baird Company, Law Printers, Los Angeles.

PAUL P. O'BRIEN,  
CLERK



## TOPICAL INDEX.

	PAGE
Statement of the Case.....	3
Summary of Argument.....	6
Argument .....	7
I. The conveyance complained of by the plaintiff in this action was the deeding of property by the bankrupt subsequent to adjudication and not only the fraudulent assignment prior to adjudication as contended for by the appellant herein .....	7
(a) The trustee in bankruptcy pleaded a conveyance subsequent to bankruptcy, Baum grantor to Walter Kleinschmidt .....	7
(b) The trial court found the conveyance was one made by the bankrupt subsequent to bankruptcy; Kleinschmidt became a resulting trustee.....	7
II. There can be no bona fide holder of a bankrupt's property after adjudication .....	9
Title to property of bankrupt vested in trustee.....	9
III. Title taken by a trustee in bankruptcy includes title to property fraudulently conveyed prior to bankruptcy.....	12
(a) Kleinschmidt knew Baum was in bankruptcy.....	12
IV. The trial court was asked to believe that fifty per cent was the percentage to be paid by Kleinschmidt to Baum as a real estate commission for services and to a man "who had no real estate license and could not legally render such services." The trial court did not believe it.....	16
V. The facts shown by the evidence are consistent only with a course of concealment, deceit and dishonest dealing on the part of Baum and Kleinschmidt.....	18
VI. Conclusion .....	22

## TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Acme Harvester Co. v. Beekman, 222 U. S. 300; 56 L. Ed. 208, 27 A. B. R. 262.....	11

STATUTES AND CODES.	
Bankruptcy Act, Sec. 70 A.....	9
General Laws California, Act 112, Sec. 1 (Deering), p. 26.....	17

TEXT BOOK AUTHORITIES.	
Collier on Bankruptcy, 12th Ed., p. 1124.....	12
Collier on Bankruptcy, 12th Ed., p. 1144.....	12
Collier on Bankruptcy, 12th Ed., p. 1181.....	11
Remington on Bankruptcy, Vol. 4, Sec. 1560.....	10

No. 8662.

**In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.**

---

MARGARET D. KLEINSCHMIDT, as Administratrix  
of the Estate of Walter Granger Kleinschmidt,  
Deceased,

*Appellant,*

vs.

ERNEST U. SCHROETER, as Trustee in Bankruptcy  
of the Estate of B. F. Baum, a Bankrupt,

*Appellee.*

---

**BRIEF FOR APPELLEE.**

---

**Statement of the Case.**

This is a suit by the trustee in bankruptcy of Benjamin F. Baum, bankrupt (after reopening of the bankruptcy proceeding), to collect the value of an interest in property transferred after bankruptcy by the bankrupt Baum to Walter Kleinschmidt.

The conveyance complained of by the plaintiff, trustee, in this action, is NOT only the assignment prior to bankruptcy, but the conveyance which was a deed of property made by the bankrupt subsequent to his adjudication in bankruptcy. The complaint in this action pleaded a conveyance *subsequent* to bankruptcy.



The trial court found that the bankrupt, at the date of his bankruptcy, was an owner of an interest in the property known as the Camp Rock Mine, and found that the bankrupt had attempted to convey it unknown to the trustee and unknown to the court *after* bankruptcy. That conveyance was in form of deed signed by the bankrupt, which appears on pages 65 and 66 of Transcript of Record and which is recorded in San Bernardino County. It is Exhibit 11. The evidence showed that Baum actively concealed his interest in that property, and it was not scheduled. That Baum did not disclose to the Referee in Bankruptcy, or to his trustee, or to his creditors after bankruptcy, the existence of his interest, but attempted to convey that interest by deed to Kleinschmidt during the administration of his bankruptcy estate. Baum's schedules showed his debts in excess of \$90,000.00 and his assets were less than one thousand, to-wit \$588.24 [Tr. p. 81.]

The evidence shows that Kleinschmidt knew of the bankruptcy proceeding of Baum, and that four days after the bankrupt Baum's discharge in bankruptcy a sale of the property was made by Baum for \$50,000.00 in cash, of which, after the payment of \$21,800.00 and other expenses, there remained \$21,760.00. That under the terms of a written agreement between the bankrupt Baum and Kleinschmidt this was to be divided equally, \$10,880.00 to Baum and the same amount to Kleinschmidt. This agreement, Pltf. Ex. 12, reads:

"San Francisco, California  
November 15, 1932

"In consideration of one dollar (\$1.00) and other good and valuable consideration, I, the undersigned, W. G. Kleinschmidt, hereby grant and assign to B. F. Baum fifty per cent (50%) of any and all amounts

of money received by me from the sale or lease of the Camp Rock Placer Mine situated in San Bernardino County, California, after having deducted, when payable, from such amounts of money certain sums due Frank J. Murray, J. W. Sullivan and certain other parties mentioned in that certain agreement between W. G. Kleinschmidt, B. F. Baum and J. W. Sullivan, dated the twenty-fourth (24th) day of April, 1931. The said Camp Rock Placer Mine is now held under sale contract by Frank Llewellyn and there is due, as of November 15, 1932, from said Frank Llewellyn, under said sale contract, thirty-nine thousand two hundred dollars (\$39,200.).

W. K. Kleinschmidt''

[Tr. p. 68]

It was and is contended by the trustee in bankruptcy that there can be no *bona fide* holder of a bankrupt's property transferred after adjudication, that a title taken by a trustee in bankruptcy includes the title to property fraudulently conveyed prior to bankruptcy, and that Kleinschmidt, the grantee under the deed, became a resulting trustee.

The evidence showed, without contradiction, that the property was sold for \$50,000.00, and the court gave judgment for the trustee for \$10,880.00, being one-half of the amounts received by Kleinschmidt after the payment of the sums required to be paid under the Plaintiff's Exhibit 12 [Tr. p. 68]. From this judgment Baum does not appeal. This appeal is perfected by the administratrix of the estate of Walter Kleinschmidt, now deceased.

## Summary of Argument.

### I.

The conveyance complained of by the plaintiff in this action was the deeding of property by the bankrupt subsequent to adjudication and not only the fraudulent assignment prior to adjudication as contended for by the appellant herein.

(a) The trustee in bankruptcy pleaded a conveyance subsequent to bankruptcy, Baum grantor to Walter Kleinschmidt.

(b) The trial court found the conveyance was one made by the bankrupt subsequent to bankruptcy; Kleinschmidt became a resulting trustee.

### II.

There can be no *bona fide* holder of a bankrupt's property after adjudication.

### III.

Title taken by a trustee in bankruptcy includes title to property fraudulently conveyed prior to bankruptcy.

(a) Kleinschmidt knew Baum was in bankruptcy.

### IV.

The trial court was asked to believe that fifty per cent was the percentage to be paid by Kleinschmidt to Baum as a real estate commission for services and to a man "who had no real estate license and could not legally render such services." The trial court did not believe it.

### V.

The facts shown by the evidence are consistent only with a course of concealment, deceit and dishonest dealing on the part of Baum and Kleinschmidt.



## ARGUMENT.

### I.

The Conveyance Complained of by the Plaintiff in This Action Was the Deeding of Property by the Bankrupt Subsequent to Adjudication and Not Only the Fraudulent Assignment Prior to Adjudication as Contended for by the Appellant Herein.

- (a) THE TRUSTEE IN BANKRUPTCY PLEADED A CONVEYANCE SUBSEQUENT TO BANKRUPTCY, BAUM GRANTOR TO WALTER KLEINSCHMIDT.
- (b) THE TRIAL COURT FOUND THE CONVEYANCE WAS ONE MADE BY THE BANKRUPT SUBSEQUENT TO BANKRUPTCY; KLEINSCHMIDT BECAME A RESULTING TRUSTEE.

The allegation in the plaintiff's bill in equity relates to a conveyance made subsequent to bankruptcy, not prior, as claimed for in appellant's brief.

The allegation reads:

“This is a suit in equity brought under sections 70 and 70-E of the Bankruptcy Act of the United States of 1898 and Amendments thereto, to set aside and void transfers of property consisting of the interest of the bankrupt in and to certain mining properties hereinafter described which property was transferred by the bankrupt to Walter Granger Kleinschmidt *subsequent to the filing of the voluntary bankruptcy of Benjamin F. Baum.*” (Italics ours.) [Tr. p. 5.]

The trial court in its findings found:

“That at the time of the making of said schedules and the filing thereof on the 6th day of November, 1931, at the time of the making of the decree of adjudication in bankruptcy as to said Benjamin F.

Baum, said Benjamin F. Baum was the owner of an interest in a certain group of mining claims with water rights appertaining thereto, commonly known as the Camp Rock mining property and also as Camp Rock Mines.” [Findings of Fact, p. 37 Tr.]

And in its conclusions :

“The court concludes that the conveyance of September 12, 1931 by Benjamin F. Baum to Walter Granger Kleinschmidt was made in contemplation of bankruptcy, was made without consideration, and was a fraud upon creditors of Benjamin F. Baum. The court concludes that the conveyance made on the 29th day of February, 1932, attempting to convey by deed, Benjamin F. Baum grantor, to Walter Granger Kleinschmidt, grantee, the Camp Rock mining property, was without consideration, was a void act, and the said conveyance did not pass any title to Walter Granger Kleinschmidt, same having been made and executed *after the adjudication of Benjamin F. Baum*, a bankrupt, having been made without the knowledge, without the consent of the court, the Referee in Bankruptcy or the Trustee in Bankruptcy, and without an order of the court or the Referee.” [Tr. p. 50.] (Italics ours.)

The question of whether or not Kleinschmidt was a *bona fide* holder of the property is not seriously involved. There could be no title acquired by Kleinschmidt, and that question, however, is commented upon in another phase of our argument hereafter, and in answer to our adversary's contention that the dealings of Baum and Kleinschmidt were consistent only with fair and honest dealings.

## II.

### **There Can be No Bona Fide Holder of a Bankrupt's Property After Adjudication.**

Benjamin F. Baum filed a voluntary petition in bankruptcy at Los Angeles on the 6th day of November, 1931 and was adjudicated a bankrupt on the same day. He scheduled in excess of \$90,000.00 in liabilities. He did not schedule Camp Rock mining properties or make any reference to them.

On the 29th of February, 1932 and while the bankruptcy proceedings were still pending unadministered, Benjamin Baum deeded to Walter G. Kleinschmidt the Camp Rock mining properties in San Bernardino County, California. [See deed p. 65 Tr.] No disclosure was made to the trustee in bankruptcy, referee in bankruptcy or to the creditors of the ownership of the Camp Rock mining properties, nor was any application made to the court or to any person to sell or convey the property.

#### **TITLE TO PROPERTY OF BANKRUPT VESTED IN TRUSTEE.**

“Sec. 70—TITLE TO PROPERTY (a) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date he was adjudicated a bankrupt, except insofar as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in

patents \* \* \*; (3) powers which he might have exercised for his own benefit \* \* \*; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him; \* \* \* Rights of action arising upon contracts \* \* \*

Property was *custodia legis*.

Remington on Bankruptcy, Volume 4, section 1560, says:

“The maxim is repeatedly enunciated in the decisions that the ‘filing of the petition in bankruptcy is a caveat to all the world and in effect an attachment and injunction’.”

In the instant case the bankrupt Baum being adjudicated a bankrupt, forthwith on November 6, 1931, the title to all of his property became *custodia legis*.

“The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in *rem* that the estate is regarded as in *custodia legis* from the filing of the petition. It is true that under section 70a of the Act of 1898 the trustee of the estate, on his appointment and qualification, is vested by operation of law with the title of the bankrupt as of the date he was ad-



judicated a bankrupt, but there are many provisions of the law which show its purpose to hold the property of the bankrupt intact from the time of the filing of the petition, in order that it may be administered under the law if an adjudication in bankruptcy shall follow the beginning of the proceedings. Paragraph 5, section 70a, in reciting the property which vests in the trustee, says there shall vest 'property which prior to the filing of the petition, the bankrupt could by any means transfer or which might have been levied upon and sold under judicial process against the bankrupt.' Under section 67c attachments within four months before the filing of the petition are dissolved by the adjudication in the event of the insolvency of the bankrupt, if its enforcement would work a preference. Provision is made for the prompt taking possession of the bankrupt's property before adjudication if necessary. (Sec. 69a.) *Every person is forbidden to receive any property after the filing of the petition, with intent to defeat the purpose of the act.*" \* \* \* (Acme Harvester Company v. Beakman, 222 U. S. 300, 56 L. Ed. 208, 27 A. B. R. 262.) (Italics ours.)

"But after adjudication, the filing of the petition amounting to constructive notice, there can be no *bona fide* holder." (Page 1181, Collier on Bankruptcy, 12th edition.)



III.

**Title Taken by a Trustee in Bankruptcy Includes Title to Property Fraudulently Conveyed Prior to Bankruptcy.**

(a) KLEINSCHMIDT KNEW BAUM WAS IN BANKRUPTCY.

It is provided in subdivision 4 of section 70 of the Bankruptcy Act entitled, "Title to Property," that the title is transferred to certain properties including "property transferred by him in fraud of his creditors." And subdivision 5:

"Property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him."

*Collier on Bankruptcy*, 12th Edition, at p. 1144, says:

"The trustee is vested not only with the title of the property, but also with the creditors' rights of action with respect to property of the bankrupt fraudulently transferred or encumbered by him, and he may assail in their behalf all of such transfers and encumbrances to the same extent as though the bankrupt had not been declared a bankrupt."

Page 1124, *Collier on Bankruptcy*, 12th Edition, commenting further, Collier says:

"It is apparent that this provision applies to all property transferred by the bankrupt in fraud of his creditors."

As is shown elsewhere in this brief, the evidence made to appear before the trial court showed that the bankrupt Baum, owing \$90,000.00, had no property other than \$588.24, other than his interest in the Camp Rock prop-

erty. As we shall show hereafter by the admission against interest of Baum, he had lost all of his property at the time he made the assignment in September just prior to his November bankruptcy.

With respect to the assignment made prior to bankruptcy, the court made the following findings:

“The court finds that at the time of the adjudication of Benjamin F. Baum as a bankrupt on the 6th day of November, 1931, Benjamin F. Baum scheduled debts in excess of \$90,000.00, and that in contemplation of said bankruptcy proceedings, which were voluntary on the part of Benjamin F. Baum, he did, on the 12th day of September, 1931, and less than sixty days prior to the filing of his bankruptcy on November 6, 1931, and while he was indebted to creditors in a sum in excess of \$90,000.00, he, the said Benjamin F. Baum, entered into an agreement with Walter Granger Kleinschmidt, who was then a person jointly interested with him in the said mining property hereinbefore described, the Camp Rock Mining Property.

“That at said time it was agreed by and between the said Benjamin F. Baum and said Walter Granger Kleinschmidt that Benjamin F. Baum should assign his interest in and to said mining property and his, Benjamin F. Baum’s, contractual rights therein and thereto, and convey the same to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt agreed that he would hold the same as the property of Benjamin F. Baum, to and until such time as Benjamin F. Baum should be free of entanglements and obligations of his, the said Benjamin F. Baum’s, creditors. That said Walter Granger Kleinschmidt then and there agreed to reconvey said property at

a date in the future and at a time when said Benjamin F. Baum should request the same, and at a time when and after Benjamin F. Baum should be free of and from the obligations of his, Benjamin F. Baum's creditors. That on September 12, 1931, Benjamin F. Baum made and delivered to Walter Granger Kleinschmidt an instrument purporting to assign to Kleinschmidt his interest in the mining property hereinbefore described." [Tr. pp. 39-40.]

The instrument referred to as the instrument of September 12 is not a deed of the real property and purported only to be an assignment. The court had before it evidence to support the above finding. The court had before it the schedules of the bankrupt showing \$90,000.00 in liabilities of the bankrupt Baum and less than one thousand dollars in assets. [Ex. 2, Tr. p. 59, and Tr. p. 81.] The trial court had before it the admission against interest on the part of Baum in his testimony, as follows:

"The date of the assignment of my interest to Kleinschmidt is the 23rd of September. On that day I was in Los Angeles. I wasn't doing anything at that time; trying to get myself together. I just lost all my money." [Tr. p. 155, testimony of Benjamin Baum.]

The trial court also had the evidence against interest of Mr. Baum that after he made that assignment in 1931, and from the date of that assignment continuously until after he filed his bankruptcy on November 6, 1931, he was exercising dominion over the mining property in question by way of trying to make a sale of it, notwithstanding the present contention that he had disposed of his interest to Kleinschmidt. [Tr. p. 155.]



The trial court had before it the fact that Baum, at the time of his bankruptcy and thereafter, did not disclose in his schedules or otherwise, that he had any interest in this mining property. The trial court had before it the documentary proof of the deed of February 29, 1932 made by Baum to Kleinschmidt *after* the bankruptcy proceeding. The trial court had before it testimony showing that Kleinschmidt had knowledge of, first, the existence of the bankruptcy during the course of the administration, and second, that he had knowledge of the fact that Baum had been a bankrupt when he dealt with him “the second time.” [Tr. p. 159.]

The trial court had before it admission against interest of Baum in his cross-examination:

“My bankruptcy schedules were sworn to on November 5th and they are in evidence here. At that time I didn’t give a damn for any interest I had in the Camp Rock property and that is what I thought at the time. Five months and four days later, I sold the property for \$50,000 but I didn’t get any money.” [Tr. p. 153.]

The trial court had before it the documentary evidence that Kleinschmidt in writing had agreed to give Baum “fifty per cent of any and all amounts of money received by me from the sale or lease of the Camp Rock Placer Mine situated in San Bernardino County.” [Pltf’s. Ex. 12, Tr. p. 68.]

This is some of the evidence, together with all the circumstances before the court, which constitutes the answer to appellant’s claim that there was no evidence before the court from which the court could make the finding and conclusion complained of.

IV.

**The Trial Court Was Asked to Believe That Fifty Per Cent Was the Percentage to be Paid by Kleinschmidt to Baum as a Real Estate Agent's Commission for Services. A Commission to be Paid to Baum Who Had No Real Estate License and Could Not Legally Render Such Service and Be Paid for It. The Trial Court Did Not Believe It.**

Appellant sets up a man of straw, to-wit, the argument III, subdivision (c), contending that Baum's trustee in bankruptcy is not entitled to Baum's earnings after adjudication. No such contention has been made by the trustee in bankruptcy or is now asserted herein. We concede the principle of law, Baum's trustee in bankruptcy is not entitled to Baum's after-acquired property. In the instant case the trial court found that the conveyance made prior to bankruptcy, to-wit, an assignment, was fraudulent and that the conveyance made by deed after Baum's bankruptcy was void. The conveyance resulted only in making Walter Kleinschmidt a resulting trustee. Kleinschmidt's administratrix now attempts to answer by claiming that Kleinschmidt gave 50% of the net on his mining deal to his agent Baum for making the sale. Baum, under the agreement taking \$10,880.00, and Kleinschmidt, who says he was the absolute owner of all the interest, taking an equal amount. From the cross-examination of Mr. Baum we find the following:

“Mr. Kleinschmidt came down here from San Francisco and said to me, ‘I wish you would *act as my agent* in the sale of the Camp Rock property.’ I was looking after his affairs from July on.” [Tr. p. 152.] (Italics ours.)



Under the laws of the State of California as they existed at that time and at all the times mentioned in these proceedings, *agents* who acted in real estate transactions and for the sale of real property and interests therein must be licensed persons. It was made unlawful for any person to act as a real estate agent and to collect money for services so unlawfully engaged in. Act 112, sec. 1, General Laws of California, under the title, "Agents," reads:

"It shall be unlawful for any person \* \* \* or act in the capacity of a real estate broker, or a real estate salesman within this state without first obtaining a license therefor."

That Baum did not have a real estate license during any time in 1932 when he says he negotiated for the sale and completed the sale of the mining property, Walter Kleinschmidt seller to Llewellyn buyer, is admitted by his testimony in this case.

"The deal was made with Evans and Llewellyn but I wouldn't take the responsibility of keeping those people together. The fact that Evans dropped out and Llewellyn came back, why, the sale was all I was interested in. I wasn't trying to keep them together. At the time I made the deal and thereafter, at any time in 1932, *I did not have a real estate broker's license*. I couldn't and never collected a real estate commission for making that sale." [Cross-examination Baum, Tr. p. 153.] (Italics ours.)

The trial court was shown the existence of an assignment, Baum to his partner Kleinschmidt, September 12, 1931, made just prior to bankruptcy of Baum. The court was shown a deed, Baum grantor to Walter Kleinschmidt grantee, of the mining properties in San Bernar-

dino County known as Camp Rock Mine, which deed was dated, acknowledged and recorded all *after* the bankruptcy adjudication of Baum, the grantor. The trial court did not believe the specious story told by Baum that after he concealed the property from the court and his creditors, he earned his interest back by rendering services as the agent of the owner, his partner, Kleinschmidt, and that for such services he received the same amount as did Kleinschmidt, the alleged owner of the whole interest. From the findings and judgment of the trial court it will be noted that Baum takes no appeal.

V.

**The Facts Shown by the Evidence Are Consistent Only With a Course of Concealment, Deceit and Dishonest Dealing.**

Appellant in her opening brief argues that the facts shown are consistent only with fair and honest dealings on the part of Baum and Kleinschmidt. We have heretofore shown by the citations of law that there can be no *bona fide* holding after adjudication of bankrupt, and the question of *bona fides* is immaterial. We are answering therefore at this time only the argument III, subdivision (b) of appellant's brief and her accompanying assertion that there is no evidence of unfair dealing.

Baum was adjudicated a bankrupt November 6, 1931. [Tr. p. 59, Exhibit 1.] On February 29, 1932 he deeded his interest in the Camp Rock mining properties to Kleinschmidt. Baum was discharged as a bankrupt after paying less than one per cent to his \$90,000.00 of creditors, on April 4, 1932. [Tr. p. 81.] Four days later, April 8, he made sale of the Camp Rock mining property for \$50,000.00 in cash.

Benjamin Baum testified in this case that his interest in the Camp Rock mining properties was of no value as of November 6, 1931. With nothing being done at the mine other than assessment work, the interest of Baum became worth \$25,000.00 within four days after his discharge in April of the next year, 1932. This is what the court was asked to believe. The trial court found:

“That no order of court was obtained permitting the conveyance of said property. That Benjamin F. Baum informed Walter Granger Kleinschmidt, during the pendency of his bankruptcy administration, that he was a bankrupt, and the said Walter Granger Kleinschmidt knew, during the period of administration of the estate of Benjamin F. Baum, that Benjamin F. Baum had been adjudicated a bankrupt and that his status was that of a bankrupt.” [Tr. p. 41.]

In support of that finding, the court had among others the testimony against interest of Benjamin Baum, to-wit:

Testimony as given of the bankrupt case before the referee used as impeachment of him in the trial of the instant case:

“I gave the testimony before the Referee in Bankruptcy on February 13, 1936, mentioned on page 23.

“ ‘Mr. Turnbull: Q When you were going through bankruptcy Kleinschmidt didn’t know anything about it?’

“ ‘A Oh, yes.’

“ ‘Q At the time he dealt with you the *second* time, did you tell him you were through bankruptcy then, when you acquired that interest?’

“ ‘A I told him I had been discharged.’



“ ‘Q You told him at that time you were free to do business?’

“ ‘A Yes. They told me I was free to do business after I filed the bankruptcy.’ ” [Page 159, Tr. of R.]

It should be noted that the “*second time*” refers to the time of the 50 per cent agreement.

It is contended and argued for by appellant that the February 1932 deed of Baum to Kleinschmidt was given only for the purpose of clearing the title. It appears affirmatively that Benjamin Baum was a married man, living with his wife and had been married fifteen (15) years prior to bankruptcy. When Mr. Kleinschmidt’s attorney, Mr. Blanche, prepared the deed which we are so told was to clear the title to it, he did not even request Mrs. Baum’s signature thereto, although he knew Baum was a married man, and the interest of Baum had been acquired during coverture. An examination of this document, plaintiff’s exhibit 11, printed on pages 65 and 66 Transcript of Record, shows the sole signature of Benjamin F. Baum. The testimony of Mr. Blanche, counsel for Mr. Kleinschmidt during his life time, shows: (1) That Mr. Blanche knew at the time he drew that deed that Baum was in bankruptcy.

“I knew that Mr. Baum attained the status of a bankrupt about November 1931, but when that knowledge came to me, I don’t recall. I knew that he executed a quitclaim deed to Mr. Kleinschmidt after his bankruptcy. The document I am referring to is plaintiff’s exhibit 11, and is an instrument dated February 29, 1932. I knew of the recording of the deed which I prepared. At that time my knowledge

was rather indefinite as to the date Mr. Baum had been declared a bankrupt, but it is my opinion now that I then knew that he had previously been adjudicated, or was mixed up in some bankruptcy proceedings. I am familiar with section 70 of the Bankruptcy Act that title to all property of choses in action passes to a trustee in bankruptcy if he is adjudicated if he has any title.” [Page 109, Tr. of R.]

and

“Mr. Baum was a married man. I did not have his wife join in the deed because she wasn’t on the original deed. This was merely for the purpose of clarification of the record. Frankly, I don’t know why I didn’t have her sign it. Perhaps it was an oversight. I think it definitely was.” [Page 134, Tr. of R.]

and from testimony of Baum:

“My bankruptcy schedules were sworn to on November 5th and they are in evidence here. At that time I didn’t give a damn for any interest I had in the Camp Rock property and that is what I thought at the time. Five months and four days later, I sold the property for \$50,000, but I didn’t get any money. Eventually \$49,000 was collected by Kleinschmidt.” [Page 153, Tr. of R.]

This is the evidence that counsel refers to as showing conduct consistent only with fair and honest dealing: Concealing a property first and failing to schedule it in his sworn schedules; then deeding the property without telling his wife anything about it or getting her signature, after bankruptcy, at which time he said it was of



no value, obtaining no order of Court for the sale, actively concealing it from the Court and from his creditors; obtaining a discharge and four (4) days later selling the property for \$50,000 in cash under an agreement by which he was to obtain fifty (50) per cent of the net proceeds. Thereafter, when brought to task about the situation, claiming it was payment for his services, to-wit:

Fifty (50) per cent commission for acting as a real estate dealer,

admitting that he had no real estate dealer's license, and therefore, under the laws of California, no right to act as agent nor to accept a real estate agent's fee; the knowledge of the transferee, Kleinschmidt, of the existence of the bankruptcy, the acceptance of a deed without the grantee's wife joining. These are the facts which the appellant has the temerity to argue to this court are solely consistent with fair and honest dealings. These are the facts which the trial court had before it and held to the contrary.

### **Conclusion.**

We respectfully, earnestly and confidently submit that the findings and conclusions of the trial court, who heard the evidence, who had the opportunity of observing the demeanor of the witnesses upon the stand and who selected the testimony which he believed and that which he did not believe, are correct. One learned eastern court is quoted as having said, "It will not be presumed that the man upon the bench is dumber than the ordinary man

upon the street.” The presentation of the facts in this case to a man of ordinary understanding with the ordinary conception of right and wrong, could lead only to the conclusion reached by the trial judge.

Honest men who have interests in real property which are valueless do not actively conceal them when they file voluntary bankruptcy, or omit them from their bankruptcy schedules, nor fail to advise the referee and court, and the creditors, of the existence of such valueless property. Bankrupts always schedule valueless property. After bankruptcy honest men do not secretly convey valueless property to their partners who have knowledge of the existence of the bankruptcy proceedings. In the ordinary course of honest business, valueless mining property, without substantial development work does not become valuable in five months and sell for \$50,000.00 in cash. In the ordinary course of business the owner of property does not pay a stranger to the title fifty per cent for making a sale for him of valuable property. Honest men, knowing of the bankruptcy of their partners, do not take titles to property without an order of the court permitting the transfer, and attorneys who are skilled in their profession do not prepare deeds which are not to be and are not signed by married men’s wives when such documents are obtained for the purpose of clearing titles.

Courts were ordained to do justice, and precedents which we follow are but the concentrated wisdom of human experience in times past. We take these precedents because, while our civilization progresses, human na-

ture remains the same, as may be evidenced by the present day reading of the ancient proverbs of Solomon. Obviously the bankrupt put his property located 200 miles from the forum of his creditors' meetings in the name of Kleinschmidt until a few days after his discharge and then contracted to recover his full share. The judgment of the honorable trial court was the only judgment which could be rendered in this matter, and we respectfully submit it should be sustained.

Los Angeles, California, November 1st, 1937.

Respectfully submitted,

RUPERT B. TURNBULL,  
*Solicitor for Appellee.*